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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH**

COWBOY CAULDRON COMPANY,)
)
 Plaintiff,)
)
 v.)
)
 TITAN MANUFACTURING AND)
 DISTRIBUTING, INC. d/b/a TITAN)
 DISTRIBUTORS, INC.,)
)
 Defendant.)

Civil Action Number 2:17-CV-1206
District Judge Jill N. Parrish
Magistrate Judge Paul M. Warner
Jury Demand

ATTORNEY PLANNING MEETING REPORT

1. PRELIMINARY MATTERS

a. The nature of the claims and affirmative defenses is: Plaintiff Cowboy Cauldron Company (“Cowboy Cauldron”) asserts trade dress infringement, unfair competition, and deceptive trade practices claims against Defendant Titan Manufacturing and Distributing, Inc. d/b/a Titan Distributors, Inc. (“Titan”) in connection with Titan’s design and manufacture of a 41" cauldron fire pit and a 29" cauldron fire pit. Titan contends that it did not engage in trade dress infringement, unfair competition, or deceptive trade practices and that the cauldron fire pits that Cowboy Cauldron designed and manufactured do not merit any such protection.

b. This case is _____ not referred to a magistrate judge
 ___X___ referred to Magistrate Judge Paul M. Warner
 ___X___ under 636(b)(1)(A)
 _____ under 636(b)(1)(B)
 _____ assigned to a magistrate judge under General Order 07-001
 and
 _____ all parties consent to the assignment for all
 proceedings or
 _____ one or more parties request reassignment to a district
 judge

c. Pursuant to Federal Rule of Civil Procedure 26(f), a meeting was held on January 22, 2018, via telephone conference. The following attorneys attended: Jared Braithwaite for Cowboy Cauldron and Dax D. Anderson, Erin Palmer Polly, and Beau C. Creson for Titan.

d. The parties _____ request / ___X___ do not request an initial pretrial scheduling conference with the court prior to entry of the scheduling order. An initial pretrial scheduling conference is set for February 14, 2018, at 11:30 a.m.

e. The parties _____ have exchanged or ___X___ will exchange by 2-12-18 the initial disclosures required by Federal Rule of Civil Procedure 26(a)(1).

f. Pursuant to Federal Rule of Civil Procedure 5(b)(2)(D), the parties agree to receive all items required to be served under Federal Rule of Civil Procedure 5(a) by either: (1) notice of electronic filing; or (2) e-mail transmission. Such electronic service will constitute service and notice of entry as required by those rules. Any right to service by USPS mail is waived.

2. DISCOVERY PLAN: The parties jointly propose to the court the following discovery plan:

a. Discovery may be necessary on the following general subjects: Cowboy Cauldron’s claim of trade dress protection; the conception, design, development, manufacture, import, marketing, and sales of Titan’s allegedly infringing products; financial information related to Titan’s sales of the allegedly infringing products; facts relevant to the elements of Cowboy Cauldron’s trade dress claim,

including whether the trade dress elements are functional, distinctive, and whether there is a likelihood of confusion between Cowboy Cauldron's products and the alleged infringing products; similarity between the parties' products; other facts relevant to the claims and defenses of the parties; and the entitlement to attorneys' fees under the deceptive trade practices claim. By providing these topics, the parties are not necessarily agreeing that all discovery on these topics will be proper and may object to such discovery.

- b. Discovery Phases. Discovery will not be conducted in phases and will not be limited to or focused upon particular issues.
- c. Designate the discovery methods to be used and the limitations to be imposed.
 - (1) Oral Exam Depositions¹
Cowboy Cauldron: 10
Titan: 10
Maximum hours per deposition: 7
 - (2) Interrogatories: 25
Admissions: 25
Requests for production of documents: 50
 - (3) The parties do not believe that other discovery methods are necessary at this time.
- d. Discovery of electronically stored information should be handled as follows: The parties will work together in good faith to reach a resolution regarding the production of electronically-stored information.
- e. The Court's Standard Protective Order will govern with respect to claims on privilege or protection as trial-preparation material asserted after production.
- f. Last day to serve written discovery: 8-15-18
- g. Close of fact discovery: 10-31-18

3. AMENDMENT OF PLEADINGS AND ADDITION OF PARTIES

- a. The cutoff date for filing a motion to amend pleadings is: 7-15-18
- b. The cutoff date for filing a motion to join additional parties is: 7-15-18

(NOTE: Establishing cutoff dates for filing motions does not relieve counsel from the requirements of Federal Rule of Civil Procedure 15(a)).

¹ This limitation does not include expert witnesses.

4. EXPERT REPORTS

Reports from experts under Federal Rule of Civil Procedure 26(a)(2) will be submitted on 11-15-18 by the party bearing the burden of proof and on 1-15-19 for counter reports.

5. OTHER DEADLINES:

- a. Expert Discovery cutoff: 3-1-19
- b. Deadline for filing dispositive² or potentially dispositive motions including motions to exclude experts where expert testimony is required to prove the case: 4-15-19
- c. Deadline for filing partial or complete motions to exclude expert testimony: 4-1-19

6. ADR/SETTLEMENT:

Use separate paragraphs/subparagraphs as necessary if the parties disagree.

- a. The parties will have initial discussions regarding the potential for a resolution of this matter.
- b. This case should not be referred to the court's alternative dispute resolution program for arbitration or mediation at this time, but the parties will remain open to the possibility of arbitration or mediation as the case progresses.
- c. If the parties believe that mediation could be productive, they will engage in mediation on or before 2-1-19.
- d. The parties will re-evaluate the case for settlement/ADR resolution on: 10-31-18

7. TRIAL AND PREPARATION FOR TRIAL:

- a. The parties should have 21 days after service of final lists of witnesses and exhibits to list objections under Federal Rule of Civil Procedure 26(a)(3).
- b. This case should be ready for jury trial by: 7-1-19
- c. The estimated length of the trial is: 4 days

² Dispositive motions, if granted, affect the final resolution of the case; nondispositive motions, if granted, affect the case but do not dispose of it.

Respectfully submitted,

/s/ Jared Braithwaite

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